duties. The sorry spectacle of a judge descending from his high public place to vindicate his official conduct, either by personal violence or by a suit for damages, would be unseemly and intolerable. A wrong committed against him thus in his public capacity is a wrong to the government he represents. It should be punished not as a private injury, but as a public wrong. So contempts of court have always been treated, and so it must continue if the courts themselves are to continue. The judge, by the very nature of his office, is of necessity constantly placed in positions of antagonism to those whose rights he determines. His judgments necessarily cross and thwart the purposes of unsuccessful suitors. He should, as a matter of public policy, therefore, be protected by the whole power of the state from the malicious asasults of disappointed litigants, as well as from attacks, criticisms and influences which would, in advance, direct and control his judgments for selfish and evil ends."

In the case of Elam *v.* Com., decided May, 1893, by the circuit court of Norfolk county, the editor of a newspaper charged in an editorial (among other things) that aid and comfort (under color of law) were being openly and outrageously extended to an alleged criminal, his gang and allied bullies; that the authorities of the county, including the county court, were actively, zealously, and unblushingly acting together to deliver such alleged criminal from the just grasp of the city authorities; and that all this was being done, not that the criminal might be punished, but that he might be shielded and delivered and kept at large as a terror to all lawabiding people, and to all who would put down lawless disorder. Such an editor was held guilty of a contempt of court.

DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

TIMBERLAKE'S COMMITTEE et al. *v.* MOORE et al.

March 14, 1907.

[56 S. E. 571.]

1. Assignment for Benefit of Creditors—Rights of Creditors—Payment of Unsecured Claim.—Decedent, after conveying land to secure debts, including one to defendants and others to complainants, sold the land, the proceeds to be applied to the payment of an unsecured claim due defendants. Held, that the complainants could have the application corrected, and that the proceeds, being impressed with the trust in favor of the secured creditors, could not without their consent be diverted to any other debt until the secured debts were satisfied; and a deed signed by one of defendants consenting to the release of the deed of assignment as to that land, reciting as a consideration that the land had been sold and the proceeds applied

to the payment of the secured debts, being no warrant for the payment of an unsecured debt, but the application of the proceeds should be disturbed only to the extent necessary to protect the secured debts.

2. Same—Creditor Not Estopped.—Decedent, after conveying land by deed of assignment to secure debts, including one to defendants and others to complainants, sold the land; the proceeds thereof being applied to the payment of an unsecured claim due defendants. Complainant sued to correct the application; the case being referred to a commissioner. Defendants' exception to his report recited that he decided the proceeds should not have been applied to defendants' unsecured claim, and applied them to their secured claim, and that he suggested that the unsecured debt was barred by limitation, and the exception recited that one of the creditors who had a secured debt conceded the correctness of the exception. Held, that the creditor's concession did not commit him to the correctness of the application of the proceeds to defendants' unsecured debt.

ARMISTEAD *v.* KIRBY et al.

March 14, 1907.

[56 S. E. 570.]

1. Mortgages—Trust Deed—Foreclosure—Deceased Beneficiary.—Where complainant executed a trust deed, conveying certain land to secure payment to K., her heirs and assigns, of a specified sum, there could be no lawful sale under the deed after K.'s death until there had been an administrator appointed for K.'s estate.

2. Same—Actual Notice.—Where a creditor secured by a deed of trust died, leaving no unsatisfied debts, and a sole distributee, and it was agreed between the debtor and such distributee that the trustee might proceed to sell property for payment of the debt, such sale could not properly be made without actual notice to the debtor.

McCURDY *v.* O'ROURKE.

March 14, 1907.

[56 S. E. 573.]

Wills—Construction.—Testator devised to one son certain property for life, remainder to his children, if any, the property to otherwise pass to a trustee in trust for testator's second son, upon the trusts declared in the next item of the will, which item devised certain other property to the trustee, the latter out of the rents to pay to said second son $600 per year while unmarried, or, if married, $1,200 per year for the balance of his life. The surplus, if any, above such sums was to be invested; the principal and interest with the real